

## IC 5-17-5

### Chapter 5. Prompt Payment

#### IC 5-17-5-1

##### **Penalty for late payments of amounts due on public contracts**

Sec. 1. (a) Except as provided in section 2 of this chapter, every state agency and political subdivision shall pay a late payment penalty at a rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel whenever the state agency or political subdivision fails to make timely payment.

(b) Except as provided in subsection (c), for the purposes of this section, payment is timely if:

(1) a check or warrant is mailed or delivered on the date specified for the amount specified in the applicable contract documents, or, if no date is specified, within thirty-five (35) days of:

(A) receipt of goods and services; or

(B) receipt of a properly completed claim.

(2) for any amount required to be withheld under state or federal law, a check or warrant is mailed or delivered in the proper amount on the date the amount may be released under the applicable law.

(c) For the purposes of this section, payment by a political subdivision is timely if:

(1) a date for payment is not specified in an applicable contract;

(2) a claim:

(A) for payment for goods or services; and

(B) that must be approved by a local legislative body or board;

is submitted to the body or board; and

(3) the political subdivision pays the claim within thirty-five (35) days following the first regularly scheduled meeting of the body or board that is held at least ten (10) days after the body or board receives the claim.

*As added by P.L.59-1983, SEC.1. Amended by P.L.52-1988, SEC.1; P.L.44-1996, SEC.1; P.L.260-1997(ss), SEC.47.*

#### IC 5-17-5-2

##### **Exemption; "good faith dispute" defined**

Sec. 2. (a) Section 1 of this chapter does not apply to the following:

(1) Interagency or intergovernmental transactions.

(2) Amounts payable to employees or prospective employees of state agencies or political subdivisions as reimbursement for expenses.

(3) Claims subject to a good faith dispute, if before the date of timely payment notice of the dispute is:

(A) sent by certified mail;

(B) personally delivered; or

- (C) sent in accordance with the procedure in the contract.
- (4) Contracts entered into before September 1, 1983.
- (5) Contracts related to highway or road construction, reconstruction, or maintenance, if:
  - (A) the Indiana department of transportation authorizes partial progress payments under IC 8-23-9-14; and
  - (B) each progress payment does not exceed five hundred dollars (\$500).
- (6) Claims, contracts, or projects that are to be paid for exclusively with federal funds.
- (b) As used in subsection (a)(3), "good faith dispute" means:
  - (1) a contention by the state or political subdivision that goods delivered or services rendered were:
    - (A) of less quantity or quality than ordered or specified by contract;
    - (B) faulty; or
    - (C) installed improperly; or
  - (2) any other reason giving cause for the withholding of payment by the state or political subdivision until such dispute is settled.

*As added by P.L. 59-1983, SEC.1. Amended by P.L. 52-1988, SEC.2; P.L. 18-1990, SEC.17.*

### **IC 5-17-5-3**

#### **Funds for late payment penalties; accrual of late payment penalty; defective claims**

Sec. 3. (a) The auditor of state shall pay a late payment penalty on behalf of any state agency required to pay late payment penalties under this chapter. The auditor of state shall pay the penalties from funds designated for administrative costs of the agency receiving the public works, personal services, goods and services, equipment, or travel. The penalties may not be paid from other funds of the state.

(b) Any late payment penalty that remains unpaid at the end of any thirty (30) day period shall be added to the principal amount of the debt and, thereafter, penalties shall accrue on that amount.

(c) In instances where a claim is filled out incorrectly, or where there is any defect or impropriety in a claim submitted, the auditor of state, any division of the Indiana department of administration that accepts claims for payment, or a political subdivision, as appropriate, shall contact the vendor within ten (10) days. An error on the vendor's claim, if corrected within five (5) business days of being so contacted, may not result in the vendor being paid late.

*As added by P.L. 59-1983, SEC.1. Amended by P.L. 44-1996, SEC.2.*

### **IC 5-17-5-4**

#### **Late payment penalties to subcontractors; accrual of interest**

Sec. 4. (a) This section applies to contractors receiving late payment penalties under section 1 of this chapter.

(b) A contractor who is unable to make timely payments to a subcontractor because of a state agency or political subdivision's

failure to make timely payments to the contractor shall pay interest to the subcontractor at the rate of one percent (1%) per month on the amount due the subcontractor after the contractor receives payment and any penalty paid under this chapter.

(c) Any interest that remains unpaid to the subcontractor at the end of any thirty (30) day period shall be added to the principal amount of the debt. After that time, interest accrues on the aggregate of the principal and unpaid interest.

*As added by P.L.52-1988, SEC.3. Amended by P.L.44-1996, SEC.3.*

#### **IC 5-17-5-5**

##### **List of agencies paying late payment penalties**

Sec. 5. (a) The auditor of state shall prepare a list that:

(1) identifies each state agency that has paid, or on whose behalf the auditor of state has paid, a late payment penalty under this chapter; and

(2) states the sum paid by the agency or by the auditor of state on behalf of the agency during the preceding year.

(b) The auditor of state shall submit the list prepared under subsection (a) to:

(1) the governor; and

(2) the budget agency;

before August 1 of each year.

*As added by P.L.52-1988, SEC.4. Amended by P.L.44-1996, SEC.4.*